

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LARHONDA SHEPARD, ET AL.,

Plaintiff,

v.

No. 4:23-cv-00857-P

AC DISASTER CONSULTING, LLC,

Defendant.

ORDER

The United States Magistrate Judge issued Findings, Conclusions, and a Recommendation (“FCR”) in this case, recommending that Plaintiff LaRhonda Shepard’s Motion for Partial Summary Judgment (ECF No. 29) be denied without prejudice as premature. *See* ECF No. 37 at 1. Plaintiff timely filed written objections to the FCR. ECF No. 38. After reviewing the FCR *de novo*, in accordance with 28 U.S.C. § 636(b)(1), the undersigned District Judge concludes that the findings and conclusions of the Magistrate Judge are correct, and they are accepted as the findings and conclusions of this Court. Accordingly, the Court **ADOPTS** the reasoning in the Magistrate Judge’s FCR and **OVERRULES** Plaintiff’s objections. Plaintiff’s Motion for Partial Summary Judgment is hereby **DENIED without prejudice** with leave to refile.

Plaintiff filed a Motion for Partial Summary Judgment on January 17, 2024—over ten weeks before the March 29, 2024 discovery deadline. *See* ECF Nos. 17. Defendant’s Response stated that written discovery had not been completed and no depositions had been taken. *See* ECF No. 35 at 7–8. Thus, the Magistrate Judge found that the Motion was premature, as it was filed before adequate discovery had been completed. *See* ECF No. 37 (citing *George v. Go Frac, LLC*, No. SA-15-CV-943, 2016 WL 94146, at *2 (W.D. Tex. Jan. 7, 2016); accord *Sewell v. Sewerage & Water Bd. of New Orleans*, 697 F. App’x 288, 291 (5th Cir.

2017); *Prospect Capital Corp. v. Mut. of Omaha Bank*, 819 F.3d 754, 757 (5th Cir. 2016)).

Plaintiff objected (ECF No. 38), Defendant filed a Response to Plaintiff's Objections one week later (ECF No. 40), and Plaintiff filed a Reply (ECF No. 42). The Court is puzzled as to the reason this issue required such extensive briefing, as a denial of Plaintiff's Motion would function without prejudice such that Plaintiff could refile after adequate discovery. Nonetheless, Plaintiff objects on the grounds that: "(1) Defendant did not move under Rule 56(d) to delay its response to the Motion; (2) Defendant did not identify any outstanding discovery which would create an issue of fact; and (3) the mere existence of non-lapsed deadlines in the scheduling order did not render Plaintiff's Motion premature." See ECF No. 38 at 2.

With regard to these arguments, this Court has consistently held that a party's motion for summary judgment may be denied as premature when filed before discovery has been completed. See *Rogers v. McLane*, No. 5:22-CV-130-BQ, 2023 WL 4629044, at *3 (N.D. Tex. June 30, 2023) (collecting cases), *report and rec. adopted*, No. 5:22-CV-130-C-BQ, 2023 WL 4636894 (N.D. Tex. July 19, 2023). "Summary judgment assumes some discovery," *Brown v. Miss. Valley State Univ.*, 311 F.3d 328, 333 (5th Cir. 2002), and such motions should not "ordinarily be granted before discovery has been completed," *Ala. Farm Bureau Mut. Cas. Co., Inc. v. Am. Fid. Life Ins. Co.*, 606 F.2d 602, 609 (5th Cir. 1979). The non-movant need not move under Rule 56(d). Thus, the non-movant need not show by affidavit that "it cannot present facts essential to justify its opposition." FED. R. CIV. PRO. 56(d). Rather, the Court has discretion to deny a premature motion for summary judgment without prejudice. See *George*, 2016 WL 94146, at *2 ("[B]eyond the protections and requirements of Rule 56(d), in the Fifth Circuit, courts have discretion to deny a motion for summary judgment as premature.").

Because the Court is within its discretion to deny Plaintiff's Motion for Summary Judgment without prejudice as premature, it need not reach the Parties' arguments on whether an unpleaded FLSA exemption may be raised in opposition to summary judgment. See ECF Nos. 38 at 1 n.1, 40 at 4, 42 at 7.

Accordingly, for the reasons stated above and in the Magistrate Judge's FCR, the Court **ADOPTS** the reasoning in the Magistrate Judge's FCR and **OVERRULES** Plaintiff's objections. Plaintiff's Motion for Partial Summary Judgment is hereby **DENIED without prejudice** with leave to refile once adequate discovery has been completed.

SO ORDERED on this **4th day of March 2024**.

A handwritten signature in black ink, reading "Mark T. Pittman". The signature is written in a cursive, flowing style. The first name "Mark" is written with a large, stylized 'M'. The middle initial "T." is written with a simple 'T' followed by a period. The last name "Pittman" is written with a large, stylized 'P' and a trailing flourish.

Mark T. Pittman

UNITED STATES DISTRICT JUDGE